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August 1, 2011

VIA FEDEX

Mr. Jan Horbaly
Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington D.C. 20439

Re: **SOVERAIN SOFTWARE V NEWEGG, 2011-1009**

Dear Mr. Horbaly:

I write on behalf of Soverain Software in response to Newegg's citation of supplemental authority concerning *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060 (2011).

As in *Global-Tech*, this Court should affirm the judgment because the evidence was more than sufficient to support the jury's verdict of inducement, even under a willful blindness standard. As the Supreme Court concluded:

> [T]he evidence when viewed in the light most favorable to the verdict for SEB is sufficient under the correct standard. The jury could have easily found that before April 1998 Pentalpha willfully blinded itself to the infringing nature of the sales it encouraged Sunbeam to make. *Id.* at 2071.

Here, there was ample evidence of Newegg's intent to induce infringement. (Soverain Br. at 37-40). Newegg was well aware that the '314 and '492 patents had undergone reexamination and that large online retailers were taking licenses to the patented technology. The prior art systems that Newegg relied on for its invalidity contentions had already been before the Examiner. And Newegg completely failed to distinguish its infringing shopping cart and hypertext statement systems, literally or under the doctrine of equivalents.

Despite these razor thin positions, Newegg did not obtain an opinion of counsel. Instead, it kept its infringing systems up and running, complete with instructions encouraging customers to use them. And it expanded the infringing use by launching new websites, including Newegg.ca and NeweggMall.com.

This is exactly what *Global-Tech* describes as willful blindness. Newegg turned a blind eye to the high probability of infringement and validity. And Newegg took steps to deliberately avoid learning those facts. That evidence is more than sufficient to support the jury's verdict, even under a willful blindness standard. Therefore, as the Supreme Court did in *Global-Tech*, the judgment here should be affirmed.[1]

Respectfully submitted,

Robert B. Wilson

cc: Edward R. Reines, Esq.

[1] Notably, Newegg did not challenge the sufficiency of the evidence by moving for JMOL under this Court's "deliberate indifference" standard. (Reply Br. at 14 n.2). As Newegg argues, it would have been "pointless" to do so. (7/22/11 letter at 2). Newegg's argument confirms that there was overwhelming evidence of intent here.

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Re: **SOVERAIN SOFTWARE V NEWEGG, 2011-1009**

Dear Mr. Horbaly:

Enclosed for filing is an original and six copies of Soverain's Response to Newegg's Citation of Supplemental Authority in the above-captioned case. An extra copy and a self-addressed return envelope are also enclosed. Please date stamp and return the extra copy for our files.

Respectfully submitted,

Robert B. Wilson

cc: Edward R. Reines, Esq.